B.C.D. 04-53

Employee Service Determination
Decision on Reconsideration

OCT 2 5 2004

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This is the decision on reconsideration of the Railroad Retirement Board's decision dated May 12, 2003, finding that services performed by JC for the Mississippi & Skuna Valley Railroad Company (M&SV) constitute employee service under the Railroad Retirement and Railroad Unemployment Insurance Acts. The request for reconsideration provides additional factual background to support the contention that the following description of JC's work for M&SV is not completely accurate.

That decision stated that:

> The M&SV is an employer (BA 3549) under the Acts administered by the Board. JC is an employee of Weyerhaeuser, a publicly traded integrated forest products company. Weyerhaeuser Corporation owns the M&SV. According to an Employee Questionnaire regarding the activities of JC supplied by Ms. Rachel Tutor, Financial Services Manager for Weyerhaeuser Corporation, JC provides financial and clerical support for the M&SV. Her duties include daily way billing, interline freight accounting, financial statement preparation, and answering the telephone. JC has a radio in her office by which she monitors and communicates with the railroad crew when they are away from the depot. JC performs her duties in a Weyerhaeuser office building that is less than 100 yards from the M&SV depot. JC provides services for both Weyerhaeuser and the M&SV. Approximately 50% of her time is spent on M&SV activities. The M&SV does not reimburse Weyerhaeuser for JC's services.

In the request for reconsideration, Mr. Bruce A. MacPhee, counsel for Weyerhaeuser, advises that the above statement of JC's duties is incorrect in that JC does not monitor the railroad crew but in effect acts as a backup to the crew's supervisors in the event that there is an emergency and the crew cannot get in touch with their supervisors. Mr. MacPhee explained that the primary purpose of the radio in JC's work area is for safety reasons to insure compliance with the Federal Railroad Administration rules so that in the event of an accident on the road, the crew can report it immediately if no staff member is available in the depot at that time. Also, Mr. MacPhee advises that the statement of JC's duties is incorrect in that Weyerhaeuser does "charge M&SV on a weekly basis for financial, purchasing and human resource support services provided by Weyerhaeuser, which would include those tasks performed by JC."[1] The charge is entered as an internal charge back between Weyerhaeuser and M&SV. Mr. MacPhee also points out that the office building where JC works is owned by Weyerhaeuser and that she is not working on railroad property.

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[1] This assertion is supported by information previously submitted on behalf of Weyerhaeuser.

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The Board submitted a copy of Mr. MacPhee's statement to JC for her comments. In a letter dated September 2, 2004, JC concurred with the description submitted by Mr. MacPhee and characterized above.

As stated in the Board's decision, section 1(d) of the Railroad Retirement Act defines an individual as "in the service of an employer" when:

> (i)(A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and
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> (ii) He renders such service for compensation * * *.

In its initial decision, the Board found that JC provides services to the M&SV, and those services are directly integrated into the management and operation of the railroad employer. Consequently, the Board found that JC is integrated into the employer's staff or operations. Accordingly, the Board found that JC is rendering professional or technical services and is integrated into the staff of the employer, and is rendering, on the property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations.

On reconsideration, the Board finds that there is no evidence that JC is subject to the continuing authority of the railroad employer M&SV to supervise and direct the manner of rendition of her service for M&SV. In fact, Mr. MacPhee points out in the request for reconsideration that JC reports directly to Rachel Tutor, the Financial Services Manager for the Weyerhaeuser Sawmill and a Weyerhaeuser employee.

As noted above, the request for reconsideration also explains that JC does not work on the property of the M&SV. Thus, the definition of employee service in subparagraph (C) cannot apply to her service.

Whether JC is performing professional or technical services for the carrier need not be decided since she clearly is not integrated into the staff of the carrier. Thus, the test of section 1(d)(1)(i)(B) is not met.

In summary, based on Mr. MacPhee's description of JC's performance of her duties, the Board finds that JC is not rendering services on the property used in the employer's operations, since the office building where she performs those services is not on the

property of the M&SV. Accordingly, JC cannot qualify as an employee of the M&SV based on section 1(d)(i)(C) of the Railroad Retirement Act. Also, based on Mr. MacPhee's description of those duties, it is apparent that JC is performing clerical services and is not rendering professional or technical services. Accordingly, JC would not qualify as an employee of the M&SV based on section 1(d)(i)(B) of the Railroad Retirement Act.

Accordingly, the Board's decision dated May 12, 2003, finding that JC's services for the Mississippi & Skuna Valley Railroad Company constitute employee service and is service creditable under the Railroad Retirement and Railroad Unemployment Insurance Acts is reversed.

Michael S. Schwartz

V. M. Speakman, Jr.

Jerome F. Kever